

Attorney Docket No. 1166

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bruce et al. Date: January 30, 2003

Serial No.: 09/766,113 Group Art Unit: 1638

Filed: January 19, 2001 Examiner: E. McElwain

For: "Novel Root-Preferred Promoter Elements and Methods of Use"

Assistant Commissioner for Patents  
Washington, D.C. 20231

**RESPONSE TO RESTRICTION REQUIREMENT**

This response is responsive to the Office Action mailed December 30, 2002.

The Examiner has restricted the Group I claims to a single member of the polynucleotide group, SEQ ID NO: 1-8.

Examiner stated that SEQ ID NO: 1-8 are unrelated, because "it can be shown that they are not disclosed as capable of use together and they have different nodes of operation, different functions, or different effects".

Applicant elects with traverse the claims of Group I (claims 1-10) drawn to SEQ ID NO 2 operably linked to a coding sequence, and expressly reserves the right to file divisional applications or take other such appropriate measures to protect the inventions in the remaining claims. No change of inventorship is required due to this election of Group I, SEQ ID NO 2.

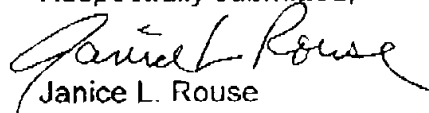
Applicant traverses the Examiner's statement that the inventions are different based on their use as hybridization probes. The sequences claimed are novel root-preferred promoter elements, not hybridization probes. Further, the MPEP states in section 803.04 that "It has been determined that normally ten sequences constitute a reasonable number for examination purposes. Accordingly, in most cases, up to ten independent and distinct nucleotide sequences will be examined in a single

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application without restriction." It is believed that these 8 promoter element sequences can be searched together without an undue burden on the Examiner.

It is therefore submitted that SEQ ID NOS: 1-8 are sufficiently closely related to be combined without undue burden.

Respectfully submitted,



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